

**DIVISION OF CONSUMER SERVICES’
ANNUAL LEMON LAW REVIEW OF
CERTIFIED INDEPENDENT DISPUTE SETTLEMENT PROCEDURES
IMPLEMENTED THROUGH IMPLEMENTED THROUGH
NATIONAL CENTER FOR DISPUTE SETTLEMENT
January 1, 2004 through December 31, 2004**

I. BACKGROUND

A. Legislative Authority

Chapter 681, Florida Statutes, effective January 1, 1989, provides the authority for the Division of Consumer Services of the Department of Agriculture and Consumer Services (Department) to certify a manufacturer’s procedure for dispute settlement that substantially complies with Title 16 C.F.R. Part 703.1 et seq. (Magnuson-Moss Act), effective October 1, 1983; Chapter 681, Florida Statutes, (Motor Vehicle Warranty Enforcement Act); and Chapter 5J-11, Florida Administrative Code.

B. Audit

Section 681.108(5), F.S., requires the Department to review each manufacturer’s certified procedure at least annually and prepare an annual report evaluating the operations of each certified procedure for compliance with the provisions of Title 16 C.F.R. Part 703, Chapter 681, F.S., and rules adopted thereunder. The Staff of the Department of Agriculture and Consumer Services, Lemon Law Section, conducts the review and prepares the annual evaluation report. This report is compiled for the fiscal year beginning January 1st and ending December 31st. The data gathering process

includes an evaluation of hearings, a review of office records, including data that is electronically submitted to the Division on a weekly basis, a review of the procedure's arbitrator training process, and a review of surveys sent to consumers who have participated in the process.

A previous report was prepared for the programs implemented by National Center for Dispute Settlement (NCDS) covering the period January 1, 2004, through August 31, 2004. That data is included in this report.

II. CERTIFIED PROCEDURES ADMINISTERED BY NCDS

A. Manufacturers

Several manufacturers have established dispute settlement procedures since the enactment of the Magnuson-Moss Act. Below are the manufacturers that have established certified procedures, implemented through NCDS, with the Department. The listings below reflects the manufacturer and their initial date of certification.

- Lexus April 17, 2004
- Porsche July 1, 2003
- Toyota July 1, 2003

The expiration date for each of the certified procedures listed above is December 31, 2004.

B. National Center for Dispute Settlement

NCDS maintains an office at 2777 Stemmons Freeway, Dallas, Texas. No offices are maintained in Florida. The NCDS program is administered by Marshall E. Lippman,

Esq.; Mr. Craig Olson, Vice President of Dispute Settlement Services; and Mr. Brian Dunn, Director of Dispute Settlement Services.

III. NCDS EVALUATION

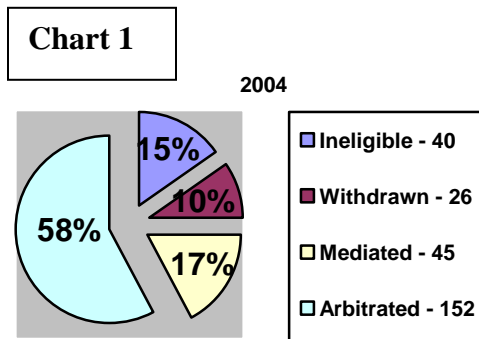
A. Recordkeeping

All files for the programs implemented by NCDS are maintained in the Dallas office. A claims report is submitted weekly via electronic transfer to the Department. This report provides the pertinent information regarding the disposition of each claim processed by NCDS for that week. An on-site review of NCDS records was conducted by Department staff on August 27, 2004.

The Florida records are maintained by manufacturer in a manner separate from other government jurisdictions in accordance with Rule 5J-11.009, F.A.C.

B. Disputes/Claims

NCDS submitted details to the Department for 263 claims processed for 2004. The claims are categorized as ineligible, withdrawn, mediated, or arbitrated. The chart below (see Chart 1) depicts the percentage breakdown in the four categories of the total claims that were closed for the 2004 audit year.



Approximately 75% of the claims filed with NCDS resulted in a settlement through mediation or arbitration.

The following table (see Table 1) provides the claim dispositions by type that were processed for each certified program implemented by NCDS during the current audit year.

Manufacturer	Ineligible	Withdrawn	Mediated	Arbitrated	Total
Lexus	3	4	10	13	30
Porsche	2	1	3	5	11
Toyota	35	21	32	134	222

Table 1

The disposition of claims are categorized as those that were declared ineligible to participate in the program, withdrawn by the consumer from the program, settled through mediation by the program, or arbitrated by the program. Following is a description of each claim disposition category and the awards provided in that disposition category:

1. Ineligible

These are disputes in which NCDS lacked contractual jurisdiction to process the case. There is no award available when a dispute is declared ineligible as the program is not required to process the claim, and the file is closed immediately. Examples of cases that are deemed ineligible include claims that are filed in an untimely manner or beyond the warranty period, claims where the vehicle was purchased or leased by the consumer as “used”, claims in which the gross vehicle

weight of the vehicle exceeded 10,000 pounds, or claims where the vehicle was purchased or leased by the consumer outside the state of Florida.

Of the total 263 claims filed with the NCDS, there were 40 cases categorized as ineligible. Division staff reviewed these files to ensure that adequate documentation supporting the NCDS' determination of non-jurisdiction was evident.

2. Withdrawn

These are claims that were withdrawn by the consumer. Since the claim was withdrawn by the consumer, no determination was made by the program. The disputes were withdrawn by the consumer for various reasons, including the consumer decided to trade the vehicle, the consumer decided not to pursue the dispute for personal reasons; and the consumer determined the problem has been corrected. 26 claims were withdrawn by the consumer during the audit period.

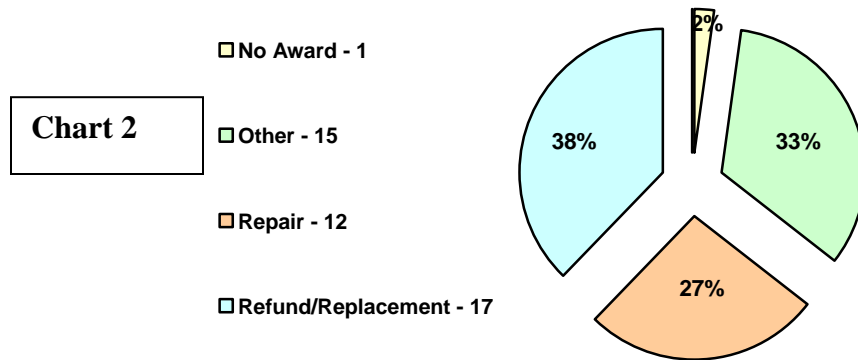
3. Mediated

These are disputes in which the consumer filed a claim with NCDS, and then the manufacturer and consumer subsequently entered into an agreement resolving the dispute prior to NCDS conducting an arbitration hearing. There were 45 NCDS case files closed through mediation. This process is typically completed within 7-10 days of the consumer filing a claim.

The manufacturer agreed to repurchase or replace the vehicle in 17 cases. 12 consumers accepted an additional repair attempt. In 15 cases, the disputes were settled through offers of trade assistance, trade allowances, reimbursement for

repairs, or extended warranties. In 1 case the attempt at mediation resulted in no award for the consumer.

The chart below (see Chart 2) shows the breakdown of the mediation cases:



The following table (see Table 2) provides a breakdown by manufacturer of the awards received through mediation. These awards are directly attributed to the manufacturer as the settlement is an agreement reached between the manufacturer and consumer without any outside intervention.

Manufacturer	No Award	Repair	Replace/Refund	Other	Total
Lexus			9		9
Porsche			3		3
Toyota	1	12	5	15	33
TOTAL	1	12	17	15	45

Table 2

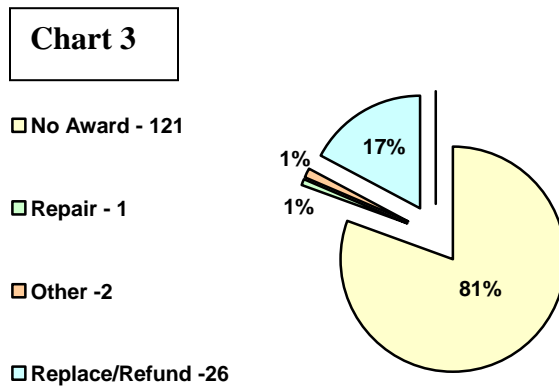
4. Arbitration

These are disputes in which the consumer filed a claim with the NCDS and NCDS conducted an arbitration hearing wherein a decision was rendered.

There were 150 cases closed through arbitration during the audit period.

NCDS arbitrators awarded a replacement vehicle or a refund to 26 consumers. 121 consumers were granted no relief. 1 consumer was awarded an additional repair attempt, and there were 2 cases in which miscellaneous decisions were rendered. Miscellaneous decisions included awards such as reimbursement for repairs, extended warranties, or partial refunds.

The chart below (see Chart 3) shows the breakdown of the arbitration cases:



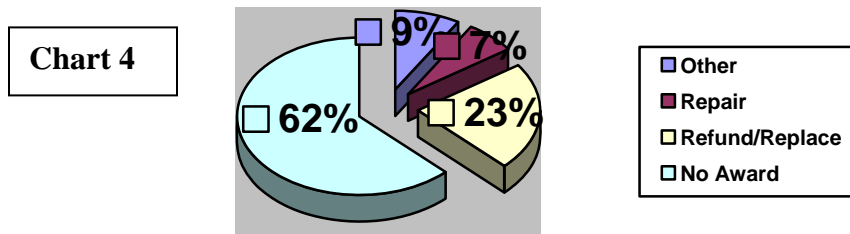
The following table (see Table 3) provides a breakdown by manufacturer of the awards received after an arbitration hearing.

Manufacturer	No Award	Repair	Refund/Replace	Other	Total
Lexus	10		1		11
Porsche	5				5
Toyota	106	1	25	2	134
Total	121	1	26	2	150

Table 3

The chart below (see Chart 4) combines all arbitrated and mediated claims. The chart reflects the awards given to consumers by percentage. 23% of the claims mediated or arbitrated resulted in a repurchase or replacement of the vehicle. In 16% of the claims, consumers received an award other than a repurchase or replacement. 62% of the claims were dismissed with no award.

2004 Awards for 194 Arbitrated & Mediated Claims



C. Arbitrators/Arbitrator Training

On August 27-29, 2004, Division personnel attended NCDS training for new arbitrators in Dallas, Texas. Division staff reviewed the content of the Arbitrator Training Manual and the instructional courses. The training manual and the instruction by NCDS sufficiently covered all aspects of the federal Magnuson-Moss Act. A brief one hour review of Florida Lemon Law was presented to the new Florida arbitrator candidates at the final session.

Following the formal training, there is minimal assistance for arbitrators or monitoring of arbitrators provided by NCDS staff. After comments by Department staff, NCDS issued an Information Bulletin dated September 2004 outlining the deficiencies of a hearing observed by the Department. Bulletins are the primary method of monitoring the arbitrator pool.

D. Hearings/Hearing Locations

NCDS provides two options for consumers to choose from with respect to arbitration. Consumers may select (1) to submit documents only for the arbitrator to review; or (2) to personally attend a hearing at a site in close proximity to their residence.

When consumers choose option 1, all documentation and a statement of fact are prepared by the consumer and sent to the Dallas office. This is forwarded to the manufacturer, who prepares a written response. The consumer is provided a copy of that statement and allowed to respond. The documents are then reviewed by a 3-member arbitrator panel and a decision rendered. There is no opportunity for rebuttal or to present additional evidence. Arbitration hearings are performed at a site near the residence of the consumer. Lexus hearings are conducted by a three arbitrator panel at a neutral site. Porsche hearings are conducted by a single arbitrator at a neutral site. Toyota hearings are conducted by a single arbitrator at a Toyota dealership.

Rule 5J -11.011, F.A.C., requires that all hearings be held no more than 75 miles from the consumer's residence. During the audit period, 263 Department surveys were sent to consumers who utilized NCDS. The surveys returned indicated that no consumers were required to travel more than 75 miles to participate in an arbitration hearing, in compliance with Rule 5J-11.011(3), F.A.C.

Title 16 C.F.R. Part 703.5(d)(1) requires consumer disputes to be processed as expeditiously as possible and that a decision be rendered within 40 days of the commencement of the action by the consumer. Data for the audit period indicates NCDS' average time for handling all cases (ineligible, withdrawn, mediated, and arbitrated) was 26.83 days.

Division staff identified 10 cases that were closed after 40 days. The claims that exceeded 40 days were claims arbitrated by NCDS. Claims that exceeded 40 days took an average of 59 days to close. These cases were extended due to the arbitrator's request for a technical report or at the consumer's request to keep the case open for various reasons.

Data received from NCDS reflected that 35 arbitrators were utilized in its arbitration hearing processes. The average number of arbitrations heard by any arbitrator during the audit period was approximately seven. There were exceptions in that one arbitrator presided over 32 hearings, another 22, and another 19.

Department staff monitored several arbitration hearings, and observed that the hearings were not well structured and the arbitrators were frequently not in control. In addition, it was noted that the replacement or refund decisions provided by the arbitrators provided a mileage offset for usage, but did not set forth the specific terms of the decision as required by Rule 5J-11.006(2)(b), F.A.C. No specific terms were provided in the decision except a determination of the mileage to be used for the offset and a statement that the refund or replacement be consistent with state statute or lemon law.

E. Independent Audit

Title 16 C.F.R. Part 703.7(a) requires each manufacturer participating in a certified program to have an audit prepared at least annually by an independent auditor to ensure compliance with the provisions of federal law. Section 681.108(4), F.S., and Chapter 5J-11, F.A.C., require that each manufacturer file with the Division a copy of the independent audit report by July 1st of the following year. The 2003 audit of NCDS' programs for all certified manufacturers was submitted October 6, 2004. Upon review of

the audit submitted by NCDS, it was noted that Florida specific data pursuant to Chapter 681.108(4), F.S., and Rule 5J-11.010(2), F.A.C., was included.

IV. REPORT SUMMARY

NCDS is commended for the improvements and corrective actions it implemented during the current audit year to correct deficiencies noted in the previous audit.

The arbitrator pool maintained by NCDS is sufficient for the Florida case load, complying with Title 16 C.F. R. Part 703.4. The arbitrators are well schooled in the applicable federal law. The instruction and training materials utilized are sufficient with respect to federal law, substantially complying with 16 C.F.R. Part 703.3(a). However, more detailed and Florida-specific training should be provided to the arbitrators, especially those participating on panels in Dallas.

NCDS should implement a procedure to monitor their arbitrators' performance more closely. The initial and refresher training are good, and the information bulletins are helpful; however, on-site monitoring with a critique of case handling should be implemented.

Title 16 C.F.R. Part 705(d) provides for the timely processing of claims within 40 days. Substantial compliance with this provision has been maintained by NCDS.

Records are submitted each week to the Department, in compliance with Rule 5J-11.007, F.A.C. The materials include the claim initiation date, the time and place of the hearing, the name and address of the claimant, the name of the arbitrator, and the vehicle used to conduct the hearing. The records submitted do not include the names of the

manufacturers' representatives, but are included in the hard-copy files submitted to the Department.

NCDS maintains adequate hearing sites in Florida to comply with the 75-mile requirement of Rule 5J-11.011(3), F.A.C. However, it continues to concern the Department that Toyota hearings are conducted at the dealership. Some consumer dissatisfaction has been noted, and the Department will continue to monitor this issue closely. NCDS is again urged to address this issue during the next period.

The independent audit submitted by NCDS was complete and in substantial compliance with the governing regulations. However, it was submitted in an untimely manner and non-compliant with Rule 5J-11.010(1), F.A.C. NCDS should ensure that its audit is submitted in a timely manner on or before June 30.

V. RECCOMENDATION

The dispute settlement procedures administered by the NCDS substantially comply with Florida Statute Chapter 681, the Florida Lemon Law and Title 16 C.F.R. Part 703, Magnuson-Moss.

Considering the documentation and information included in this report, Department staff recommends the re-certification of the informal dispute settlement procedures implemented by NCDS for Lexus, Porsche, and Toyota through December 31, 2005, in accordance with Chapter 681, F.S.